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Supreme Court, U.S.

FILED

JUL 6 1988

JOSEPH F. SPANIOL, JR.
CLERK

Case No. _____

United States Supreme Court

October Term, 1988

Irena Kalvans.

Petitioner,

v

Court of Appeals,

Respondent. /

On Appeal from Supreme Court of Michigan

Petition for Writ of Certiorari

Irena Kalvans

In propria persona

3836 Bishop Road

Detroit, Michigan

48224

Tel. 313-884-3318

Question Presented for Review

Did the Michigan Supreme Court violate
Petitioner's Constitutional right to equal
protection of the laws and due process
of law under the Fourteenth Amendment
and decisions of the United States
Supreme Court when it denied Petitioner's
Motion for Reconsideration of its
Order denying Petitioner's Complaint
for Superintending Control?

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Statement of the Grounds

On June 28, 1988, the Michigan Supreme Court denied Petitioner's Motion for Reconsideration of its Order denying Petitioner's Complaint for Superintending Control over the Michigan Court of Appeals which had returned Petitioner's Claim of Appeal as a matter of right because the circuit court's final order recited that it was not a final order. Those litigants whose final orders do not recite that they are not final orders are permitted to exercise their statutory right of appeal. The Michigan Supreme Court's denial is a violation of decisions of the United States Supreme Court with respect to the federal questions of equal protection of the laws and due process of law as guaranteed by the Fourteenth Amendment. The statutory provision authori-

zing this Petition for a Writ of Certiorari is 28 U.S.C. #1257(3).

Constitutional Provision Involved

Amendment 14, Section 1

"All persons born or naturaliz⁴d in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

On September 14, 1987, Petitioner filed a Claim of Appeal as a matter of right with the Michigan Court of Appeals together with an affidavit that the circuit judge had refused Petitioner's request to enter his final order on Wayne County Circuit Court's Praecipe/Order Form. On October 16, 1987, the circuit

judge entered a final order which recited that it was not a final order. This order was prepared by counsel for Defendants Arthur Lombard and Frederica Lombard. and it granted the Defendants' Motion for Summary Disposition of Petitioner's First Amended Complaint. On November 18, 1987, the Court of Appeals returned Petitioner's Claim of Appeal as a matter of right on the grounds that the final order recited that it was not a final order. On April 25, 1988, the Michigan Supreme Court denied Petitioner's Complaint for Superintending Control to direct the Court of Appeals to accept for filing the returned Claim of Appeal. On June 28, 1988, the Michigan Supreme Court denied Petitioner's Motion for Reconsideration. This denial violated

Petitioner's right to equal protection of the laws and to due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

Argument

The Michigan Supreme Court denied to Petitioner the equal protection of the Michigan laws, specifically: (1) the provision of the Michigan Revised Judicature Act which grants Petitioner a Claim of Appeal as a matter of right of a final order of the circuit court; (2) the provision of the Michigan Revised Judicature Act which grants the Michigan Supreme Court superintending control over the Court of Appeals; and (3) Michigan Court Rule 7.304(A).

Section 308(1)(a) of the Revised Judicature Act, being MCLA 600.308(1); MSA 27A.308(1), reads as follows:

"The court of appeals has jurisdiction on appeals from the following orders and judgments which shall be appealable as a matter of right.

- (a) All final judgments from the circuit court, court of claims, and recorder's court, except judgments on ordinance violations in the traffic and ordinance division of recorder's court."
(Emphasis supplied)

Section 314(2) of the Revised Judicature Act, being MCLA 600.314(2); MSA 27 A.314(2), which empowers the Michigan Supreme Court to exercise superintending control over the Court of Appeals reads as follows:

"The court of appeals is subject to the superintending control power of the supreme court, and this section does not affect the exercise of that power, nor the issuance of writs by the supreme court pursuant to its constitutional power." (Emphasis supplied)

Michigan Court Rule 7.304(A) reads in pertinent part as follows:

"A complaint may be filed in the Supreme Court to implement the Court's superintending control power when an

application for leave to appeal cannot be filed. ..."

In Griffin v Illinois, 351 US 12,18; 76 S Ct 585; 100 L Ed 891 (1956), the United States Supreme Court ruled that the State is not obligated to provide appellate review, but when it does so, the State cannot provide appellate review in a way that discriminates against some litigants by virtue of the Equal Protection Clause of the United States Constitution:

"It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. See, e.g., McKane v. Durston, 153 U.S. 684, 687-688. But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty. Appellate review has no become an integral part of the Illinois trial system for finally adjudicating the guilt or innocence of a defendant. Consequently at all stages of the proceedings the Due Process and Equal Protection Clauses protect persons like peti-

tioners from invidious discrimination."

The Michigan Supreme Court violated the Griffin, supra, rule of law when it failed to exercise its statutory superintending control over the Court of Appeals and failed to direct said court to accept for filing Petitioner's Claim of Appeal as of right which it had returned to Petitioner because the circuit court's final order recited that it was not a final order. Petitioner had a statutory right under RJA, #308(1) MCLA 600.308(1); MSA 27A.308(1) to file a claim of appeal as a matter of right with respect to the final order entered by the circuit court.

The Equal Protection Clause of the Fourteenth Amendment reads as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States nor shall any

State deprive any persons of life, liberty, or property, without due process of law; nor deny to any person the equal protection of the laws."

The Michigan Supreme Court violated Petitioner's right to equal protection under the law set forth in the Fourteenth Amendment because those litigants who received final orders which did not recite that they were not final orders are accorded their statutory right to file claims of appeal as a matter of right, while Petitioner is denied her statutory right.

See also Dowd v United States ex rel Cook, 340 US 206, 208; 71 S Ct 262; 95 L Ed 215 (1951) wherein the United States Supreme Court held that a discriminatory denial of a statutory right of appeal is a violation of the Equal Protection Clause of the Fourteenth Amendment:

"However inept Cochran's choice of words, he has set out allegations supported by affidavits, and nowhere denied, that Kansas refused him privileges of appeal which it afforded to others. Since no determination of the verity of these allegations appears to have been made, the cause must be remanded for further proceedings."

Petitioner had a statutory right to file her Claim of Appeal as a matter of right by virtue of RJA, #308(1)(a); MCLA 600.308(1)(a); MSA 27A.308(1)(a). The Michigan Supreme Court violated the foregoing authorities and discriminated against Petitioner in violation of the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court treated Petitioner differently from those litigants who received final orders which did not recite that they were not final orders. The Supreme Court was prohibited from such discrimination by the Equal Protection Clause

of the Fourteenth Amendment.

The Michigan Supreme Court violated Petitioner's right to due process of law under the Fourteenth Amendment when it failed to exercise its statutory superintending control over the Court of Appeals and failed to direct said court to accept for filing Petitioner's Claim of Appeal as of right which it had returned because the circuit court's final order recited that it was not a final order.

In Evitts v Lucey, 469 US 387, 400-401; 105 S Ct 830; 83 L Ed 2d 821 (1985) The United States Supreme Court ruled that the right of appeal cannot be withdrawn without consideration of due process norms:

"The right of appeal would be unique among state actions if it could be withdrawn without consideration of applicable due process norms. ***

In short, when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution - and, in particular, in accord with the Due Process Clause."

The Due Process Clause of the Fourteenth Amendment reads as follows:

"... nor shall any State deprive any person of life, liberty, or property with due process of law; ..."

Petitioner had a statutory right of appeal under RJA, #308(1)(a); MCLA 600.308(1)(a); MSA 27A.308(1)(a) of a final order entered by the circuit court. Petitioner filed a Claim of Appeal of the final order entered by the circuit court. The Michigan Supreme Court violated Petitioner's right to due process of law when it failed to direct the Court of Appeals to accept for filing Petitioner's Claim of Appeal as a matter of right returned by the Court of

Appeals because the final order recited that it was not a final order.

See also Griffin v Illinois, 351 US 12, 18; 76 S Ct 585; 100 L Ed 891 (1956) wherein the United States Supreme Court ruled that appellate review, when provided by the state, is protected by the Due Process Clause from invidious discrimination:

"Appellate review has now become an integral part of the Illinois trial system for finally adjudicated the guilt or innocence of a defendant. Consequently at all stages of the proceedings the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discrimination."

Therefore, by virtue of Evitts, supra, and Griffin, supra, the Michigan Supreme Court was prohibited from violating Petitioner's right to due process of law under the Fourteenth Amendment.

For the foregoing reasons and by virtue of the foregoing authorities, the

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Petitioner respectfully requests the
United States Supreme Court to grant
her Petition for a Writ of Certiorari.

Respectfully submitted,

Irena Kalvans

Irena Kalvans

In propria persona

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Michigan Supreme Court

Lansing, Michigan

Dorothy Comstock Riley

Chief Justice

Charles L. Levin

James H. Brickley

Michael F. Cavanaugh

Patricia J. Boyle

Dennis W. Archer

Robert P. Griffin

Associate Justices

Order

Entered: June 28, 1988

82640(5)

IRENA KALVANS,

Plaintiff,

SC: 82640

v

LC: 87-715176-NZ

COURT OF APPEALS,

Defendant

On order of the Court, the motion for reconsideration of this Court's order of April 25, 1988 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

June 28, 1988

/s/ Corbin R. Davis

Clerk

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Michigan Supreme Court

Lansing, Michigan

Dorothy Comstock Riley

Chief Justice

Charles L. Levin

James H. Brickley

Michael F. Cavanaugh

Patricia J. Boyle

Dennis W. Archer

Robert P. Griffin

Associate Justices

Order

Entered: April 25, 1988

82640

IRENA KALVANS,

Plaintiff,

SC: 82640

v

LC: 87-715176-NZ

COURT OF APPEALS,

Defendant.

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On order of the Court, the complaint for superintending control is considered, and it is DENIED, because the Court is not persuaded that it should grant the requested relief.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

April 25, 1988 /s/ Corbin R. Davis
Clerk

| | |
|-----------------------|---------------------|
| Robert J Danhof | Ronald L Dzierbicki |
| Chief Judge | Chief Clerk |
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| John H Shepherd | |
| Joseph B Sullivan | |
| Judges | |

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State of Michigan
Court of Appeals
Lansing

November 18, 1987

Ms. Irena Kalvans

3836 Bishop Road

Detroit, Michigan 48224

Name of case: Irena Kalvans v. Arthur
Lombard and Frederica
Lombard

Court of Appeals No.: 103400

Lower Court No.: 87-715176-NZ

Dear Sir or Madam:

I am returning with this letter the claim of appeal, supporting documents, and your check No. 231, in the amount of \$100.00, which you have submitted in the above cause, because the order you are seeking to appeal is not a final order or judgment under the provisions

of MCR 2.604(B). Consequently, this Court lacks jurisdiction to accept an appeal as a matter of right at this time under MCL 600.308 and 600.309 and MCR 7.203(A)(1). MCR 2.604(B) provides that the trial court has not entered a final judgment or order until all of the claims presented in the trial court and the rights and liabilities of all of the parties have been adjudicated by a formal order or judgment of the trial court. Under these circumstances, you may wait until a final judgment has been entered and then file a claim of appeal. at that time you will have a general appeal and will be permitted to challenge the order which is the subject of your returned claim of appeal.

In the alternative, if you prefer not to wait for entry of a final judg-

ment, you may file an application for leave to appeal under MCR 7.205. A third possible alternative, if the order you wish to appeal determines at least one claim of one party and if the trial court is agreeable, is to obtain an amended order containing the express determination that there is no just reason for delay and expressly directing entry of a final judgment of the claims determined under MCR 2.604(A). In that event, you may file a new claim of appeal with this Court within 21 days after the filing of the amended order.

I would note that the order itself says that it is not a final judgment and that there are motions still pending.

[unrelated to Petitioner's First Amended Complaint]

Yours truly,

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/s/ Ronald L. Dzierbicki

Ronald L. Dzierbicki

Chief Clerk

RLD: pmj

Encl. Claim of Appeal and Appellant's
Brief

cc: Mr. Victor Baum

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF
WAYNE

IRENA KALVANS,

Plaintiff, C.A. No. 87 715176 NZ

v HON. LOUIS F. SIMMONS

ARTHUR LOMBARD and

FREDERICA LOMBARD,

Defendants /

Irena Kalvans

In propria persona

3836 Bishop Road

Detroit, MI 48224

(313) 884-3318

Victor J. Baum (P10556)

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Freeman

Attorneys for Defendants

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(313) 223-3500

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held
in the City-County Building on

OCT 16 1987

PRESENT: HON. LOUIS F. SIMMONS, JR.

Circuit Judge

The Court, having reviewed the pleadings, defendant Arthur and Frederica Lombard's ("the Lombards") Motion and Brief for Summary Disposition with supporting affidavits, and Plaintiff, Irena Kalvans' response thereto, including her affidavit and brief, and having heard the oral arguments of counsel, and being otherwise fully advised in the premises,

NOW THEREFORE,

I. The Lombards' motion for summary disposition of plaintiff's complaint

is granted and defendants are entitled to judgment as a matter of law because there is no genuine issue of material fact as to the following:

a. The Lombards did not instigate, cause, induce, or attempt to instigate, cause or induce the termination of plaintiff's employment with the Michigan Attorney General's Department, by bribery, attempted bribery or otherwise, nor did they suborn or attempt to suborn perjury by anyone employed with the Attorney General's Department;

b. The Lombards did not communicate directly or indirectly with any person in the Attorney General's Department concerning termination of plaintiff's employment.

c. the Lombards did not interfere or attempt to interfere with the plain-

tiff's employment contract with the State of Michigan, Department of Attorney General.

d. The Lombards did not bribe or attempt to bribe any persons who participated in the administrative hearings concerning the termination of Irena Kalvans' employment, including the following public officials:

Administrative Law Judge Samuel

McCargo

Civil Service Department, Employment Relations Board Members:

Robert Brenner and Jerome

Brooks

Civil Service Commissioners, who reviewed the decision of the above Employment Relations Board:

John F. Dodge, Jr., Harriet B.

Rotter, and Walter R. Greene

e. The Lombards did not bribe or attempt to bribe Thomas L. Brown, the Ingham County Circuit Judge who reviewed and upheld the decision of the Civil Service Department.

f. The Lombards did not threaten to murder the plaintiff;

g. The Lombards did not influence or attempt to influence any of the twelve state legislators named in the plaintiff's complaint to refrain from investigating alleged bribery and subornation of perjury by the Lombards;

h. The Lombards did not cause, induce, influence or attempt to cause, induce or influence in any manner, the plaintiff's alleged eviction from the Michigan Plaza Building;

II. This is not a final judgment, in view of motions heretofore made

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[unrelated to Petitioner's First Amended Complaint] and pending or which may be made in the near future.

LOUIS F. SIMMONS, JR.

Circuit Court Judge

Dated: Oct 16, 1987